

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEXINGTON INSURANCE COMPANY,

Plaintiff,

v.

SANDRA SWANSON,

Defendant.

No. C05-1614P

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER ORDER
OF FEBRUARY 12, 2007,
COMPELLING DISCLOSURE OF
PRIVILEGED DOCUMENTS TO
REQUEST IMPOSITION OF
PROTECTIVE ORDER

This matter comes before the Court on a motion by Plaintiff titled "Plaintiff Lexington Insurance Company's Motion to Reconsider Order of February 12, 2007, Compelling Disclosure of Privileged Documents to Request Imposition of Protective Order." (Dkt. No. 97). Although labeled as a motion for reconsideration, the Court previously indicated that this motion should be treated and briefed as a motion for a protective order and directed Defendant Sandra Swanson to file a response. (Dkt. No. 99). Having reviewed the papers and pleadings submitted by the parties and the balance of the record, the Court finds and ORDERS as follows:

(1) Lexington asks the Court to amend its order of February 12, 2007, which partially granted a motion by Ms. Swanson to compel Lexington to produce documents from its claims file. Lexington has already produced the documents subject to that order. However, Lexington now

1 requests that the Court “amend its Order to include an Order restricting the use of those documents to
2 this litigation, only.” In this case, Ms. Swanson is proceeding as the assignee of Issaquah Care
3 Center’s (ICC) claims against Lexington. Lexington seeks to prevent Ms. Swanson from using the
4 documents produced pursuant to the February 12th order in a pending state court action in which Ms.
5 Swanson is suing Lexington as the assignee of Haelen Health Systems, who served as ICC manager.

6 (2) The Court DENIES Lexington’s motion. As a preliminary matter, the Court finds that
7 Ms. Swanson raises valid points regarding the timeliness of Lexington’s request for a protective order.
8 The parties submitted extensive briefing on Ms. Swanson’s motion to compel production of claims file
9 documents. In its briefing on the motion to compel, Lexington did not suggest that if the Court were
10 to require production of claims file documents, the Court should only compel production subject to a
11 protective order limiting the use of the documents to this case. Lexington also produced the
12 documents before moving for a protective order to limit their use to this litigation only. In a
13 somewhat analogous situation, the court in United States v. International Business Machines, 79
14 F.R.D. 412, 414 (S.D.N.Y. 1978), held that a request for a protective order was untimely when it was
15 first raised in a motion for reconsideration of an order compelling production and after the date the
16 documents were to be produced.

17 The Court also finds that Lexington has not shown good cause under Fed. R. Civ. P. 26(c) for
18 issuance of a protective order. Lexington argues that “[g]ood cause exists for the Court to include a
19 protective order restricting the use of the privileged documents to this lawsuit where Defendant
20 Swanson appears as Issaquah Care Center. Failure to do so will harm both Lexington and Issaquah
21 Care Center because Defendant will use the documents against them in the state case, despite their
22 privileged nature in that case.” The Ninth Circuit has held that “[a] party asserting good cause bears
23 the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm
24 will result if no protective order is granted.” Foltz v. State Farm Mut.Auto. Ins. Co., 331 F.3d 1122,
25 1130 (9th Cir. 2003). As Ms. Swanson observes, Lexington’s opening brief “does not even attempt to

(3) The Clerk is directed to send copies of this order to all counsel of record.

s/Marsha J. Pechman
Marsha J. Pechman
United States District Judge